



## **OFFICE OF PERSONNEL MANAGEMENT**

### **5 CFR Part 185**

### **RIN 3206-AO65**

### **Program Fraud Civil Remedies: Civil Monetary Penalty Inflation Adjustment**

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Final rule.

**SUMMARY:** This rule adjusts the level of civil monetary penalties contained in U.S. Office of Personnel Management regulations implementing the Program Fraud Civil Remedies Act of 1986, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Valerie Dew, Office of the General Counsel,  
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### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (sec. 701 of Pub. L. 114-74, 28 U.S.C. 2461 note) (“the Act”). The Act required agencies to: (1) adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rule, and (2) make subsequent annual adjustments for inflation not later than January 15 of each year. The purpose of these adjustments is to maintain the deterrent effect of civil penalties. OPM has updated the agency’s monetary penalties since the passage of the 2015 Act.

This rule takes into account adjustments for the year 2024 based on inflation since the last adjustment. These calculations were made based on guidance contained in Office of Management and Budget Memorandum M-24-07:

CFR Citation	Description of the penalty	2023 Inflation Adjustment	2024 Inflation Adjustment
5 CFR 185.103(a)	Civil Penalty for False Claims	\$13,508	\$13,946
5 CFR 185.103(f)(2)	Civil Penalty for False Statements	\$13,508	\$13,946

This final rule is being issued without prior public notice or opportunity for public comments and is effective upon publication in the *Federal Register*. The 2015 Act's amendments to the Inflation Adjustment Act required the agency to adjust penalties initially through an interim final rulemaking, which did not require the agency to complete a notice and comment process prior to promulgating the interim final rule. The amendments also explicitly required the agency to make subsequent annual adjustments notwithstanding 5 U.S.C. 553 (the section of the Administrative Procedure Act that normally requires agencies to engage in notice and comment and to delay the effective date). The formula used for adjusting the amount of civil penalties is given by statute, with no discretion provided to OPM regarding the computation of the adjustments. OPM is charged only with performing ministerial computations to determine the amount of adjustment to the civil penalties due to increases in the Consumer Price Index for all Urban Consumers (CPI-U).

## **II. Calculation of Adjustment**

The Office of Management and Budget (OMB) issues guidance annually on calculating adjustments. Under this guidance, OPM has described how to identify applicable civil monetary penalties and calculated the annual adjustment. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute or fees for services,

licenses, permits, or other regulatory review. The calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI-U.

Office of Management and Budget Memorandum M 24-07 stated that the cost-of-living multiplier for calculating adjustments in 2024 was 1.03241. This multiplier is to be applied to the current level of civil monetary penalties for agencies. When OPM's 2023 penalties of \$13,508 are multiplied by 1.03241 and rounded to the nearest dollar, the resulting penalty amount is \$13,946.

### **III. Procedural Requirements**

#### **A. Regulatory Review**

OPM has examined the impact of this rule as required by Executive Orders 12866, 13563, and 14094, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). OMB has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

#### **B. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act**

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)), requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties annually. No discretion is allowed. Thus, the RFA does not apply to this final rule.

#### **C. Unfunded Mandate Reform Act of 1995 (2 U.S.C. 1532)**

This rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and will not significantly or uniquely affect small governments.

**D. E.O. 12630, Takings**

This rule does not have takings implications.

**E. E.O. 13132, Federalism**

This rule does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

**F. E.O. 12988, Civil Justice Reform**

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Does not unduly burden the judicial system.
- (b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

**G. E.O. 13175, Consultation with Indian Tribes**

In accordance with Executive Order 13175, OPM has evaluated this rule and determined that it has no tribal implications.

**H. Paperwork Reduction Act**

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

**List of Subjects in 5 CFR Part 185**

Claims, Fraud, Penalties.  
Office of Personnel Management.

**Kayyonne Marston,**

For the reasons set forth in the preamble, OPM amends 5 CFR part 185 as follows:

**PART 185—PROGRAM FRAUD CIVIL REMEDIES**

1. The authority citation for part 185 continues to read as follows:

**Authority:** 28 U.S.C. 2461 note; 31 U.S.C. 3801-3812.

**§ 185.103 [Amended]**

2. In § 185.103, amend paragraphs (a) introductory text and (f)(2) by removing “\$13,508” and adding “\$13,946” in its place.

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